IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7562 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

GUJARAT WATER RESOURCES DEVELOPMENT CORPN LTD.

Versus

VIRAMBHAI N DESAI

Appearance:

MR PARESH UPADHYAY for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/05/2002

ORAL JUDGEMENT

Before starting the judgment, it is necessary to note the Rubai of Umar Khaiyyam, which is as under:

"Aarzoo Hai Ke Kisi Aankhmein Aansu Na Rahe;
Mere Hathomein Koi Aisa Khilauna Dede;
Varna Phir Mujhko Tadapneka Salika Dede;
Sabra De Ya Mere Zakhmonko Masiha Dede;"

Heard learned advocate Mr. Paresh Upadhyay for

the petitioner and Mr. Pathak for the respondent workman. By way of this petition, the petitioner corporation has challenged the award made by the labour court concerned in reference no. 154 of 1988 dated 10th December, 1997 wherein the labour court has granted reemployment as a fresh employment without continuity of service and also without back wages for the interim period. This Court has, by way of order dated 18th December, 1998, issued rule and has also granted interim relief subject to deposit of Rs.2000.00 by the petitioner before this Court. Mr. Upadhyay, learned advocate for the petitioner has submitted that the petitioner has already deposited an amount of Rs.2000.00 as directed by this court.

2. Mr. Paresh Upathyay appearing for the petitioner has submitted that the in the award, contention of the first party corporation that the termination is not illegal has been upheld by the labour court and yet on humanitarian ground, the labour court has granted fresh employment in favour of the respondent and in doing so, the labour court has erred. He has submitted that the labour court has no jurisdiction to pass such an award. He has also submitted that the petitioner corporation is facing hardships and financial crisis and Voluntary Retirement Scheme has already been implemented in the corporation and if the respondent is required to be re-employed as directed by the labour court, then, it would amount to adding burden on the petitioner and to pay an idle wages to the respondent. He has further submitted that the respondent has abandoned the work and has not reported for duty though an order of appointment has been given to the respondent and this aspect has not been appreciated by the labour court and, therefore, this court should interfere with the award in question.

Learned advocate Mr. P.H. Pathak for the respondent workman has submitted that the labour court has rightly appreciated the evidence produced by the petitioner and the respondent was continued at the time of termination and, therefore, the labour court thought it proper to grant only fresh employment to the respondent. He has submitted that the labour court is having such powers under section 10(1) of the Act once the matter has been referred to it for adjudication of the dispute. He has further submitted that the labour court is enjoying powers to create new conditions of service and impose certain conditions upon the employer if it thought fit in view of the facts and circumstances of each case and, therefore, according to him, the labour court has not committed any error in passing such an

award and, therefore, no interference is required by this court.

I have considered the submissions made by both the learned advocates. I have perused the award in question. There is no dispute as regards the date of appointment of the respondent namely 12.6.1986. However, there is a dispute about the date of termination in view of the fact that on 24th April, 1987, complaint has been filed by the respondent before the conciliation officer but according to the workman, he was continuing in service upto 8th June, 1987. In his deposition before the labour court, the respondent has categorically denied that he has been given the letter dated 6th November, 1988 wherein he has been given appointment and the said letter has not been received by him. Specific question was asked to the witness for the petitioner in his cross examination that any documentary evidence has been produced by the corporation to that effect and the witness said no to such question and it has been explained by him that they are not having such record. The labour court has considered one aspect that the letter of appointment has been produced by the corporation vide Exh.26/1 wherein it has been mentioned in para 2 that as and when his service is not required, same can be terminated without notice. However, considering the fact that the respondent was appointed on 12th June, 1986 and if it is presumed that he was continued upto 24th April, 1987, the date on which he filed complaint before the conciliation officer, then, he has remained in service for about 10 months with the corporation These facts are not disputed by the either side. However, it was the case case of the petitioner that the periodical appointments were given during the period from 12th June, 1986 to 24th April, 1987 and, therefore, the respondent was remaining in continuous service for a period of ten months and in such circumstances, presumption must be drawn in favour of the respondent workman that he has completed 240 days continuous service with the petitioner corporation and unless same is rebutted by the petitioner corporation, it has to be believed that the workman has completed 240 days' continuous service with the corporation but the labour court has, under misconception of law , come to the conclusion that the respondent has not proved the fact that he was permanent employee and, therefore, he is not entitled to the protection under section 25-F of the Industrial Disputes Act, 1947. According to this Court's opinion, it is the clear misconception and an error in law on the part of the labour court in believing that only permanent workman is entitled for the protection of

section 25-F of the Industrial Disputes Act, 1947. As a matter of fact, as per the law laid down by the apex court, even the daily wagers are also entitled for such protection if they are able to prove that they have completed 240 days continuous service with the employer within 12 months preceding the date of termination as per the decision of the apex court in case of Ratansinh Versus Union of India and another reported in [1997] 11 SCC 396. In para 3 of the said decision, the apex court has observed as under:

> "3. We find merit in the submission of Shri Ashri. From the dates mentioned in the judgment of the first appellate court dated 22.1.1985, it appears that the appellant had continuously worked for more than 240 days in a year. Since he was a workman, he was entitled to the protection of section 25F of the Act and the said protection could not be denied to him on the ground that he was a daily rated worker. It is not the case of the respondent that the provisions of section 25F of the Act were complied with while terminating the services of the appellant. In these circumstances, the termination of services of the appellant cannot be upheld and has to be set aside. The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs.25,000.00 be paid to the appellant in lieu of compensation for b back wages as well as reinstatement. This amount is being paid in full and final settlement of all the claims of the appellant. The said amount shall be paid within two months The appeal is disposed of accordingly. No costs."

Thus, as per the law laid down by the apex court in aforesaid decision, even the daily rated workmen are entitled for such protection if they are completed 240 days service. However, without examining this aspect, the labour court has, under the misconception of law, held that since the respondent workman has not proved that he is permanent employee of the corporation, he is not entitled for the benefit of section 25F of the Industrial Disputes Act, 1947. However, without going into that controversy and considering the fact that on 6th November, 1988, according to the corporation letter

of appointment has been served upon the respondent workman providing work in different well at Umbhana-2 and Aklva, but according to the petitioner, he has not reported for work at Umbhana-2 and Aklva, considering this, after all the labour court has exercised the discretionary powers and has thought it fit to exercise such discretionary powers considering the fact that the workman has remained out of job since 1987 to 1997, for a period of about ten years on humanitarian grounds and therefore, it granted only reemployment without back wages and continuity of service. If the labour court would have rightly appreciated the provisions of section 25-F of the Industrial Disputes. Act in light of the law laid down by the apex court in aforesaid decision, when there was no contention raised by the corporation about the periodical appointments, the labour court ought to have drawn presumption in favour of the workman that he has completed 240 days' continuous service, then, the labour court would have granted better reliefs in favour of the workman. However, since no petition has been filed by the respondent workman challenging that part of the award in question, this court is not considering that aspect. Therefore, according to my opinion, the labour court has not committed any error while granting such relief in favour of the respondent workman. Mr. Upadhyay has not been able to point out any jurisdictional error and/or procedural irregularity committed by the labour court. He has also not been able to point out any infirmity in the award impugned in this petition. Therefore, according to my opinion, no interference is required by this court while exercising the powers under Article 226 and/or 227 of the Constitution of India.

This Court has considered the contention raised by Mr. Upadhyay about the financial constraints of the petitioner and that no work is available with the petitioner and voluntary retirement scheme has been implemented and, therefore, the petitioner is not in a position to implement the award in question by reinstating the respondent, and it would amount to unnecessarily burdening the petitioner. From the perusal of the award in question, it is undisputed fact that the respondent has worked for a period of ten months continuously and it was not the case of the petitioner that he was not in continuous service. It was also not the case of the petitioner that he was appointed on periodical basis. Therefore, presumption must be drawn in favour of the respondent that he has worked for 240 days continuously during the last 12 months preceding the date of termination. It is also not the case of the

petitioner that while retrenching the workman and terminating his services, the petitioner has followed the mandatory provisions of section 25-F of the Industrial Disputes Act. However, only because of the misconception of law on the part of the labour court, the labour court has not granted effective relief in favour of the respondent and since the respondent has not approached this Court and has not challenged that part of the award, now, this Court cannot grant any better and effective relief in favour of the workman. However, considering non compliance of section 25F of the Industrial Disputes Act, 1947, financial constraints and non availability of work is not an answer and under such pretexts, the petitioner cannot say that it is not in a position to implement the award of reinstatement. This aspect has been examined by the Division Bench of this Court in case of Gram Panchayat, Damnagar versus Sharad D. Acharya, reported in 1994 (1) GLR 579. Relevant observations made by the Division Bench in para 6 and 7 of the said judgment are reproduced as under:

"6. Thirdly, it is submitted that the post has been abolished and, therefore, reinstatement could not have been granted. It is true that the Panchayat had abolished the post as a measure of economy and terminated the services of the workman. However, the Panchayat did not fulfil the requirements of sec. 25-F and, therefore, termination is illegal and void and he has to be reinstated and, if necessary, the post has to be re-created to comply with the order of reinstatement. It is not open to an employer to contend that since the employer had abolished the post, the order of reinstatement could not be complied with. It would amount to giving licence to the employer to illegally terminate the services and to render the Court helpless in granting reinstatement. That would be perpetuating illegality and injustice. Therefore, petitioner's third contentions has no merit.

7. Lastly, it was submitted that because of the precarious financial condition of the Panchayat, the backwages should not have been awarded. Once it is held that the condition precedent has not been followed, the termination is void and ineffective and the workman is deemed to be continuing in service and entitled to backwages. The reason given of poor economic condition of the employer is not substantiated

factually and is not of any avail legally."

In view of the aforesaid principles laid down by the Division Bench of this Court in aforesaid decisions, the contention raised by Mr. Upadhyay has no substance and same is, therefore, the contention in that regard is rejected.

Further, this Court is having very limited jurisdiction under Article 226 and/or 227 of the Constitution of India. It is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

Recently also, the Apex Court has considered the scope of Article 226 and 227 of the Constitution of India in case of OUSEPH MATHAI AND OTHER V. M. ABDUL KHADIR reported in 2002 [1] SCC 319. The relevant observations in para 4 & 5 are quoted as under :-

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the

jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Warayam Singh v. Amarnath this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora v. Commr. of Hills Division & Appeals. In Babhutmal Raichand Oswal v. Laxmibai It. Tarte this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R. V. Northumberland Compensation Appeal Tribunal, ex p Shaw [All ER at p.128] This Court in Chadavarkar Sita Ratna Rao v. Ashalata S. Guram held : [SCC pg.460, para 20]

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of the fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a

findings are perverse and not based on any material evidence or it resulted in manifest injustice [see Trimbak Gangadhar Telang]. Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indiction of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limit of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

Recently also, the Apex Court has considered the scope of Article 226 and 227 of the Constitution in case of ROSHAN DEEN VS. PREETILAL reported in [2002] 1 SCC Pg.100. Relevant observations in para-12 are quoted as under :-

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measure to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it [vide State of U.P. v. District Judge, Unnao]. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to

erase such justice in the name of correcting the error of law."

Therefore, there is no substance in this petition and is required to be rejected. Same is therefore dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated. There shall be no order as to costs.

Learned advocate Mr. Pathak appearing for the respondent workman has submitted that the respondent is out of jot since 1987 and though the award in question made by the labour court dated 10th December, 1997 has not stayed by this Court, the respondent has not been given the benefits under section 17-B of the INDUSTRIAL DISPUTES. Act from the date of the award till this date and, therefore, some suitable directions are required to be issued to the petitioner to comply with the directions issued by the labour court under its award dated 10th December, 1997 within some reasonable period.

Considering the request made by Mr. Pathak, it is directed to the petitioner to reinstate the respondent workman within one month from the date of receipt of the copy of this order and it is further directed to the corporation to pay full wages to the workman concerned with effect from 10th December, 1997 till the date of actual reinstatement within three months from the date of receipt of copy of this order.

Learned advocate Mr. Upadhyay appearing for the petitioner has prayed before this Court to stay the operation of these directions for some reasonable period so as to enable the petitioner to approach the higher forum. He has also submitted that because of the ensuing summer vacation, the Division Bench will be available only after the vacation and, therefore, operation of this order may be stayed by continuing the interim relief granted by this court earlier for some reasonable period. The request made by Mr. Upathyay cannot be accepted only on the ground that this Court has given sufficient time for implementing the award in question. One month's time has been given to the petitioner to reinstate the petitioner in service and three months' time has been given to the petitioner to pay full wages from the date of the award in question till the date of actual reinstatement of the respondent workman from the date of receipt of copy of this order. Therefore, according to this court's opinion, the time given by this court is sufficient and if it is decided by the petitioner to

approach the higher forum, then, in the mean time, the petitioner can utilize such time for approaching the higher forum and can make request for interim relief against the award in question as well as the directions issued by this Court. Therefore, the request made made by Mr. Upadhyay is rejected.

8.5.2002. (H.K. Rathod,J.)
Vyas